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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2017-0006]

Supplemental Environmental Impact Statement for the Cape Wind Energy Project

MMAA104000

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is giving notice of its intent to prepare a Supplemental Environmental Impact Statement (EIS) for the Cape Wind Energy Project on Horseshoe Shoal in Nantucket Sound off the coast of Massachusetts. This supplement to the 2009 Final EIS will provide new analysis in response to a 2016 remand order of the U.S. Court of Appeals for the District of Columbia Circuit in *Public Employees for Environmental Responsibility v. Hopper*, No. 14-5301 (D.C. Cir.).

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1722, or michelle.morin@boem.gov.

SUPPLEMENTARY INFORMATION:

1. Proposed Action and Alternative

On July 5, 2016, the U.S. Court of Appeals for the District of Columbia Circuit vacated the 2009 Cape Wind Energy Project Final EIS and ordered that BOEM “supplement [the EIS] with adequate geological surveys before Cape Wind may begin construction.” *Public Employees for Environmental Responsibility v. Hopper*, 827 F.3d 1077, 1084 (D.C. Cir. 2016). The Court

opined that “[w]ithout adequate geological surveys, the [BOEM] cannot “ensure that the seafloor [will be] able to support wind turbines.” *Id.* at 1083. While the Court found that “[BOEM] therefore had violated NEPA,” the Court noted, however, that “[it] does not necessarily mean that the project must be halted or that Cape Wind must redo the regulatory approval process.” *Id.* at 1083-4. The Court explicitly left undisturbed BOEM’s 2010 decision to issue the lease and BOEM’s 2011 decision to approve the Construction and Operations Plan (COP). *Id.* at 1084. Therefore, the only alternatives considered in the 2009 Final EIS that are still applicable and that will be analyzed in detail in the Supplemental EIS are: (1) rescinding the decision to issue the lease to Cape Wind Associates, LLC (equivalent to the No Action Alternative in the 2009 Final EIS); and (2) leaving undisturbed the decision to issue the lease (equivalent to the Proposed Action in the 2009 Final EIS).

The Supplemental EIS will consider and analyze any new information that is within the scope of the Court’s order. BOEM will examine the available geological survey data, including the geotechnical data and reports submitted to BOEM since the 2009 Final EIS, and any other relevant data that relates to the adequacy of the seafloor to support wind turbines in the lease area.

2. Scoping

In accordance with 40 CFR 1502.9(c)(4), BOEM will not conduct additional scoping for this Supplemental EIS. The remand by the U.S. Court of Appeals for the District of Columbia established the scope for this Supplemental EIS. The Draft Supplemental EIS will be announced for public review and comment: (1) in the *Federal Register* by BOEM and the Environmental Protection Agency and (2) on the BOEM website at: <https://www.boem.gov/Renewable-Energy-Program/Studies/Cape-Wind.aspx>.

3. Cooperating Agencies

BOEM invites other Federal, State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of this supplemental EIS. We invite qualified government entities to inquire about cooperating agency status. You may contact the Office of Renewable Energy Programs at the address shown in the FOR FURTHER INFORMATION CONTACT section of this Notice.

AUTHORITY: This Notice of Intent to prepare a Supplemental EIS is in compliance with NEPA, as amended (42 U.S.C. § 4231 *et seq.*), and is published pursuant to 40 CFR 1508.22.

Dated: February 28, 2017.

Walter D. Cruickshank
Acting Director, Bureau of Ocean Energy Management
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